

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

3 UNITED STATES OF AMERICA,)
4 Plaintiff,)
5 v.)
6 DAVID SIDOO, GREGORY COLBURN,)
7 AMY COLBURN, GAMAL ABDELAZIZ,)
8 DIANE BLAKE, TODD BLAKE,)
I-HSIN CHEN, MOSSIMO GIANNULI,) Criminal Action
9 ELIZABETH HENRIQUEZ, MANUEL) No. 1:19-cr-10080-NMG
HENRIQUEZ, DOUGLAS HODGE,)
MICHELLE JANAVS, ELISABETH)
KIMMEL, LORI LOUGHLIN, WILLIAM)
10 McGLASHAN, JR., MARCI PALATELLA,)
JOHN WILSON, HOMAYOUN ZADEH,)
11 ROBERT ZANGRILLO,)
12 Defendants.)

BEFORE THE HONORABLE M. PAGE KELLEY
UNITED STATES MAGISTRATE JUDGE

INITIAL STATUS CONFERENCE

June 3, 2019

John J. Moakley United States Courthouse
Courtroom No. 24
One Courthouse Way
Boston, Massachusetts 02210

Linda Walsh, RPR, CRR
Official Court Reporter
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24 produced by computer-aided stenography

1 P R O C E E D I N G S

2 THE CLERK: Criminal Case Number 19-10080, United
3 States versus David Sidoo, et al., the Honorable M. Page Kelley
4 presiding.

5 Would counsel please identify themselves for the
6 record.

7 MR. ROSEN: Good morning, Your Honor. Eric Rosen,
8 Leslie Wright, and Justin O'Connell for the Government.

9 THE COURT: Good morning.

10 MR. WEINBERG: Good morning, Your Honor. Martin
11 Weinberg on behalf of Robert Zangrillo and David Sidoo.

12 MR. KATZ: Good morning, Your Honor. Aaron Katz for
13 Elizabeth Henriquez.

14 MR. BEIRNE: Good morning, Your Honor. Eoin Beirne
15 for Elisabeth Kimmel.

16 MR. RUBY: Good morning, Your Honor. Josh Ruby and
17 George Vien for Mossimo Giannulli.

18 MR. SCHUMACHER: Good morning, Your Honor. David
19 Schumacher for Amy and Gregory Colburn.

20 MR. FLASHNER: Good morning, Your Honor. Cory
21 Flashner on behalf of Elisabeth Kimmel.

22 MR. PIROZZOLO: Good morning, Your Honor. Jack
23 Pirozzolo on behalf of William McGlashan.

24 MR. LOUCKS: Good morning, Your Honor. Michael Loucks
25 on behalf of Marci Palatella.

1 MR. KOTLIER: Good morning, Your Honor. Jonathan
2 Kotlier and John Littrell for Michelle Janavs.

3 THE COURT: Good morning.

4 MR. TRACH: Good morning, Your Honor. William Trach
5 for Lori Loughlin.

6 MR. O'CONNOR: Your Honor, Brien O'Connor and Miranda
7 Hooker for Doug Dodge.

8 THE COURT: Good morning.

9 MR. SUTRO: Good morning, Your Honor. Steve Sutro and
10 David Meier for the Blakes.

11 MR. MEIER: Good morning, Your Honor.

12 THE COURT: Good morning.

13 MR. SHARP: Josh Sharp of Nixon Peabody for Gamal
14 Abdelaziz.

15 MR. KELLY: Brian Kelly as well.

16 MR. THEODOROU: Nicholas Theodorou and Matthew
17 Schwartz for Robert Zangrillo, Your Honor.

18 THE COURT: Good morning.

19 MR. BROWN: Good morning, Your Honor. Walter Brown
20 for Manuel Henriquez.

21 MS. SIDDALL: Good morning, Your Honor. I'm Megan
22 Siddall on behalf of Homayoun Zadeh.

23 MR. CAHN: Good morning, Your Honor. Reuben Cahn and
24 Jennifer Kelleher on behalf of I-Hsin Chen.

25 MS. KELLEHER: Good morning, Your Honor.

1 THE COURT: Good morning. Okay. That's everyone.

2 All right. So I have the parties' joint initial
3 status report, which is 388 on the docket, and I've read it.
4 And what I think I'll do is just go through the matters that
5 are here, and if anyone wants to be heard on any particular
6 issue, just try to stand up and start talking.

7 So with regard to the pending discovery requests, I
8 understand the parties are conferring on more comprehensive
9 indices, and I think I'll just leave it up to the parties to
10 keep talking about that.

11 Anyone want to say anything about that?

12 (No response.)

13 THE COURT: Okay. So with regard to number two,
14 additional discovery, I know the Government has its Brady
15 obligations, and I think they understand those. If someone
16 would like to be heard on why they think a certification is
17 necessary, I'm happy to hear you.

18 Yes?

19 MR. KATZ: Good morning, Your Honor.

20 THE COURT: If we could just have everyone identify
21 themselves just for the record.

22 MR. KATZ: Sure. Aaron Katz for Elizabeth Henriquez.
23 I think I probably speak for many of the defendants, if not all
24 of them here.

25 I think the issue is that the Government may have a

1 different conception of what constitutes Brady in this case as
2 the Defendants. Normally, you know, you get 302s. You see the
3 interview reports. We can make the call on our own about
4 whether certain information is exculpatory both as to guilt or
5 punishment and sentencing, which also comes within the
6 definition of Brady.

7 Here during the meet and confer, and, Mr. Rosen, I
8 apologize if I am misstating anything, but part of our
9 conversation was about interviews the Government may have had
10 with other parents that were clients of Rick Singer that have
11 not been charged in this case, and particularly whether any of
12 those parents told investigators, told the prosecutors that
13 Rick Singer essentially told them that their money was going to
14 be going to athletic programs or to schools and not in them --
15 in the pocket of a coach who had been bribed and corrupted.

16 If Rick Singer was telling other parents that the
17 money that they were giving to Key Worldwide was going to go to
18 the athletic programs, we think that's exculpatory. I think
19 that goes to the heart of one of the critical elements of the
20 honest services fraud charge, which is whether someone has
21 actually been bribed in exchange for breaching his or her
22 fiduciary duty.

23 We have seen already some e-mails from Rick Singer
24 that did make such representations to certain parents who have
25 not been charged in this case, but we think that there's going

1 to be more of that in 302s. And the new policy at the office
2 apparently is that we are not going to get 302s unless the
3 Government determines if there is Brady in them. Again, I
4 don't question that the prosecutors understand their Brady
5 obligations. If there's something that's exculpatory, they
6 have to produce it. Mr. Rosen represented that they are not
7 going to be sitting on Brady until we get 30 days out from
8 trial; they are going to produce it on a rolling basis. And we
9 appreciate that very much. But I do think that there is going
10 to be a difference of opinion, a significant one, about what is
11 Brady and what is not. And a good faith disagreement but one
12 that's critically important.

13 THE COURT: I'm still not sure -- I guess this is the
14 reference including the Government's policy regarding FBI
15 reports on the first page?

16 MR. KATZ: Correct.

17 THE COURT: Okay. I'm still not sure why, if the
18 Government doesn't think certain materials are Brady, why
19 having them certify that they have given you all the Brady
20 would really cure that. I mean, I think I'll address your
21 point, but I still don't know that the certification is
22 necessary, but --

23 MR. KATZ: You know, it may not be. It certainly
24 won't be sufficient to resolve this disagreement. I mean, this
25 may be something where the future discovery requests that go to

1 Your Honor are going to actually tease out what's Brady. What
2 also makes this case a little bit unique, as I read the
3 indictment, it's a three or a four object conspiracy count, and
4 so I think the prosecutors may feel like, well, we have got
5 powerful evidence on one of the objects, and this exculpatory
6 evidence only goes to another object that doesn't really affect
7 guilt on the charge. But it does go to certainly sentencing,
8 you know, if there were a conviction. But also there are
9 certain legal and sort of legal infirmities arguably of certain
10 of the objects, and those are different, right? And so all of
11 the exculpatory evidence on any of the objects is critically
12 important to have. But if Your Honor would like to deal with
13 that with the discovery requests after we set deadlines, that
14 may make more sense. That may be what we have to do.

15 THE COURT: Okay. Does anyone else want to be heard
16 on this point that Mr. Katz was just raising?

17 Okay. Mr. Rosen?

18 MR. ROSEN: Just briefly, Your Honor. The Government
19 is aware of its obligations and will continue to review and
20 disclose our discovery as a trigger for a massive amount of
21 discovery, I think approximately 3 million pages of discovery,
22 along with the wiretap calls, consensual calls, you know,
23 millions of e-mails, lots of documents, applications and
24 everything like that.

25 First of all, a certification is completely unworkable

1 in terms of, you know, the nature of discovery can change as
2 the case progresses as more is discovered. We are aware of our
3 obligations. We are working through them. It's good enough in
4 every other case. There's no, I don't think, any rule that
5 requires some type of Government certification. Even there,
6 defense counsel, although there's different opinions on what
7 constitutes a bribe or not, has not identified any exculpatory
8 evidence. It doesn't -- it simply doesn't matter whether the
9 money went to a coach's program or whether it went to a -- the
10 coach's pocket directly. A bribe is simply a quid pro quo with
11 the intent to defraud, and all the Defendants have been charged
12 with that.

13 I think the best practice is for Defendants first to
14 review the discovery and then we can meet, confer. We are very
15 good about getting back to Defendants. And if they have, you
16 know, an issue later on, we can address that, but we're not
17 going to hand over all of our 302s willy-nilly because the
18 Defendants feel like they have some theory about why certain
19 things could be exculpatory to them or not.

20 MR. WEINBERG: I think Mr. Rosen has just put his
21 finger on one of the chasms between the Government's
22 understanding of Brady and the defense. If money went to a
23 school, whatever the discussions, it's not a bribe, at least
24 not a bribe within the ambit of the Government's allegations in
25 this case that there were bribes paid to specific people for

1 specific performance or a breach of services. So we would want
2 to reserve for a time that Your Honor felt it was appropriate
3 to tee up and crystallize this issue where we claim that is
4 exculpatory evidence and the Government has just said it's not.

5 THE COURT: Okay. That was Mr. Weinberg speaking.

6 Since we don't have a stenographer here, we have just
7 got to identify yourself.

8 MR. WEINBERG: Sorry, Judge.

9 THE COURT: Okay. I hear you all, and I think it's a
10 good idea what everyone is saying, that we wait and let this
11 issue kind of develop, and then I'm happy to take it up. And
12 it may be we want to take it up before the next status hearing,
13 but I think -- you know, I would just urge the Government if
14 the Defendants can show you any arguable reason why they think
15 something is exculpatory, you might as well turn it over if you
16 can bring yourself to do that, but otherwise, I'm happy to hear
17 it.

18 So -- okay. So let's just get into the discovery and
19 if you want to try to further persuade the Government, if that
20 doesn't work, then come back. Okay?

21 MR. WEINBERG: Thank you.

22 THE COURT: Okay. I'm not going to require the
23 Government to certify at this time.

24 With regard to the timing issues, I know the rules set
25 pretty firm deadlines on discovery motions, but I'm just not

1 going to do that because there's so much discovery, and I know
2 the Government is producing it on a rolling basis here. And I
3 think as issues arise and you want to be heard on them, I'm
4 happy for you to request it from the Government and then file a
5 motion as the rules require. I do really think I'm going to
6 strictly enforce the rule that says you have to confer before
7 filing motions, so please do that.

8 And I agree with the proposal at the bottom of Page 2
9 that Defendants can confer and exchange letter requests, and
10 there are no deadlines on that at this time. I think at the
11 next status hearing, if discovery is substantially complete, I
12 will set some deadlines for making additional discovery
13 requests, but I'm not going to do that now. So I will not set
14 a pretrial motion schedule at this time and perhaps, depending
15 on people's progress in making their way through the discovery
16 and the Government's giving over all the discovery, perhaps it
17 will be appropriate for everyone to provide a proposed briefing
18 schedule when you file your next status conference report prior
19 to the interim status conference.

20 With Mr. Schumacher's agreement, I will request the
21 resolution of the motion to dismiss be stayed as requested, and
22 I'm going to suspend the Government's deadline for responding.

23 MR. SCHUMACHER: Thank you, Your Honor.

24 THE COURT: Okay. That was Mr. Schumacher
25 saying -- okay.

1 Is the Government going to have experts in this case?

2 MR. ROSEN: It's a little early to tell. I think
3 really the only experts that we would have are maybe historical
4 cell-site experts, if they are still considered experts in this
5 day and age. We've turned over the historical cell sites we
6 have so far. So I don't really anticipate one, but obviously
7 as we narrow down the issues for trial, we'll make a final
8 determination there.

9 THE COURT: Okay. So I think I'm just going to put
10 over this issue of expert disclosure dates to the next status
11 conference, and we'll see how it's shaking up, whether there
12 even are any experts to be arguing over with regard to the
13 dates. I'll adopt the parties' request for the next status
14 conference to be on October 2nd, and I'll have that at 2:15,
15 and I'm going to exclude the time between today and October 2nd
16 unless I hear an objection. I will ask the Government to
17 provide a list of potential witnesses to defense counsel by
18 June 30th as requested -- as set out here on Page 4. Is that
19 workable?

20 MR. ROSEN: Yes, with the understanding it will be
21 supplemented as sort of we, you know, obviously prepare for
22 trial and things like that.

23 THE COURT: Okay. And -- okay. So anything about any
24 of these things that -- I don't want to prohibit any of the
25 defense counsel from saying anything. Anything else?

1 (No response.)

2 THE COURT: Okay. So the Government has filed a
3 motion for a hearing concerning conflicts of interest under
4 seal, Number 383 on the docket. I'm going to allow that
5 motion, and I'm also going to allow the motion for that motion
6 to be filed under seal. And -- so I will be scheduling the
7 so-called *Foster* hearings in the case. And I know,
8 Mr. Weinberg, you have filed something --

9 MR. WEINBERG: We have, Your Honor.

10 THE COURT: -- in response?

11 MR. WEINBERG: For both Mr. Sidoo and Mr. Zangrillo,
12 Your Honor.

13 THE COURT: Okay. So I think what we'll do is
14 schedule hearings where the clients will need to be here so
15 that I can have a colloquy with them and also sign a waiver
16 since the Rules of Professional Conduct require that the waiver
17 be in writing, and I would just ask counsel to file something
18 prior to the hearing -- Mr. Weinberg, I think you already
19 have -- setting out why the conflict is not a problem, or if
20 you decided that it is to get out of the case. And then I'll
21 have a better understanding of the kind of background and your
22 response to what the Government is saying.

23 So any comments about that from anyone? Yes,
24 Mr. Rosen?

25 MR. ROSEN: Just briefly. Does that include the --

1 your granting of those other motions to seal, also the motion
2 for the brief length, the extended page pagination?

3 THE COURT: Yes. I think that was allowed earlier
4 today. Sorry. Yes, that's allowed.

5 MR. ROSEN: And do you want us to file a redacted copy
6 on the docket as we have sort of in our exhibit?

7 THE COURT: Mr. Weinberg?

8 MR. WEINBERG: I would object to that. I think that
9 all of the parties should be able to file their responses
10 before the Government's motion gets unsealed, and then, Your
11 Honor, at the time of your taking of the waivers through the
12 *Foster* inquiry can decide whether or not to unseal all or part
13 of the exchange of positions.

14 THE COURT: Okay. So I think -- I do think, though,
15 if it's possible to put a redacted version of the Government's
16 sealed motion on the docket, I should do that.

17 MR. WEINBERG: I don't think it's necessary at this
18 time. I think it only has the potential in a case, at least
19 some Defendants are going to be seeking a jury trial some day,
20 to add a burden to the potential future jury inquiries, and
21 again, I would ask that if the Government's redacted version be
22 filed so should the Defendants' responses. And since many of
23 the responses from my co-counsel have not been filed yet and
24 will be filed pursuant to whatever schedule the court orders,
25 that all of it be deferred until they have the exchange of

1 briefs so you're not getting an asymmetrical picture in the
2 public media.

3 THE COURT: Okay. So here's what I'll do: Those of
4 you who will have the *Foster* hearings, file your responses
5 under seal. You don't need to file a motion for that. And
6 I'll wait to have the Government file a redacted version of its
7 original motion, which is 283, until the Defendants have filed
8 their pleadings.

9 Then I would -- once the exchange is complete, I would
10 like the parties to confer with each other, the Government with
11 each Defendant and vice versa, about what redacted version
12 should appear on the docket and agree to that. And please
13 redact as little as possible. Just redact what is necessary
14 because it does need to be public as far as it can be. Okay.

15 MR. O'CONNOR: Your Honor, may I ask a clarification?

16 THE COURT: Can you just identify yourself.

17 MR. O'CONNOR: Brien O'Connor, sorry, Your Honor, for
18 Douglas Hodge.

19 Does that cover the U.S.C. situation, too? We don't
20 see that as a *Foster* hearing but on the, you know, the filings,
21 the process you just set forth, does that cover the other issue
22 that's also covered by the Government's brief, too?

23 THE COURT: Yes, and -- but I would like an
24 explanation as to why that is not a problem in your filings.

25 MR. O'CONNOR: Yes. Yes, Your Honor, of course.

1 THE COURT: Okay. And then we'll see do we need to
2 have a hearing or not.

3 MR. O'CONNOR: Yes. Thank you.

4 THE COURT: Yes, Mr. Schumacher?

5 MR. SCHUMACHER: Thank you, Your Honor. Just
6 clarification, is it required that the Defendants be here in
7 person for that hearing? As you know, the Defendants are
8 primarily out of state. I think the rule is silent on whether
9 it has to be in person or telephonically, and Your Honor has
10 great discretion regarding the timing and the forum of this
11 hearing.

12 THE COURT: So I think it does need to be in person.
13 If you can find some authority that it doesn't, but I think
14 it's important enough constitutionally that it needs to be in
15 person, and I just think it does. And we will set up the
16 hearings at your -- I mean, we have quite a bit of time here
17 until the next status hearing, so we can set up the hearings at
18 your convenience. You know, you can work with Ms. Belmont to
19 get an agreeable date.

20 MR. SCHUMACHER: Fair enough.

21 MR. O'CONNOR: Your Honor -- Brien O'Connor again for
22 Douglas Hodge. I would just say I think the U.S.C. issue maybe
23 sets up differently as it's not a *Foster* hearing, but might we
24 explain to you why that is in our filing and then we can decide
25 whether the clients need to be there?

1 THE COURT: Yes. That's great.

2 MR. O'CONNOR: Thank you.

3 MR. KATZ: Your Honor, Aaron Katz for Elizabeth
4 Henriquez. Just a point of clarification on scheduling. Are
5 you imagining a *Foster* hearing with all of the impacted
6 Defendants or could there be *seriatim*? I know there's so many
7 people.

8 THE COURT: I'm happy to do them separately.

9 MR. KATZ: Thank you.

10 THE COURT: And I don't think they will take a long
11 time, and I'm happy for Ms. Belmont, also, to forward counsel
12 the colloquy that I'll be going through so you can go over it
13 with your clients and make sure that they're prepared. But I
14 do -- I think it is really critical that the client -- this be
15 explained to the clients in a coaching way by their lawyers so
16 that -- I really do want to make sure they understand what
17 they're doing. Okay.

18 DEFENSE ATTORNEY: Your Honor, we discussed with the
19 Government filing those responses by June 27th. Is that a date
20 that works for the Court?

21 THE COURT: That's absolutely fine, and if it turns
22 out you need some additional time, just agree with the
23 Government and you don't need to file anything on the record,
24 but just get -- I mean, end of June would be great.

25 DEFENSE ATTORNEY: Great. Thank you, Your Honor.

1 THE COURT: Then we'll try to have these hearings in
2 July and get it taken care of.

3 DEFENSE ATTORNEY: Okay.

8 | Okay. Anything else?

9 MR. KENDALL: One small thing, Your Honor. I think I
10 missed roll call. Mike Kendall for John Wilson.

11 THE COURT: Okay. Mr. Kendall, good morning still.

12 MR. CAHN: Judge, one question, Reuben Cahn. For the
13 October status conference, are clients required to be present?

14 THE COURT: No. The clients don't have to be present
15 at any of the status conferences.

16 MR. CAHN: Thank you, Your Honor.

19 (Recording ends at 11:25:06)

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1 CERTIFICATE OF OFFICIAL REPORTER
23 I, Linda Walsh, Registered Professional Reporter
4 and Certified Realtime Reporter, in and for the United States
5 District Court for the District of Massachusetts, do hereby
6 certify that the foregoing transcript is a true and correct
7 transcript of the stenographically reported proceedings held in
8 the above-entitled matter to the best of my skill and ability.9 Dated this 5th day of June, 2019.10
11
12 /s/ Linda Walsh
13 Linda Walsh, RPR, CRR
14 Official Court Reporter
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